UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
OFFICE OF THE CHIEF ADMINISTRATIVE HEARING OFFICER

May 29, 1997

EARL W. WERLINE, III	)	
Complainant,	)	
	)	8 U.S.C. § 1324b Proceeding
v.	)	
	)	OCAHO Case No. 97B00023
PUBLIC SERVICE ELECTRIC	)	
& GAS COMPANY	)	
Respondent.	)	

FINAL DECISION AND ORDER
WITH SCHEDULE FOR BRIEFING ON ATTORNEY'S FEES

PROCEDURAL HISTORY

This is an action alleging unfair immigration-related employment practices in which Earl W. Werline, III is the complainant and Public Service Electric & Gas Company (Public Service or PSE&G) is the respondent. Werline alleged that Public Service engaged in conduct prohibited by the Immigration and Nationality Act, as amended, 8 U.S.C. § 1324b (1994) (INA) when it refused to accept the documents that he presented to show he can work in the United States. The complaint is signed by John B. Kotmair, Jr., Director of the National Worker's Rights Committee.

Werline's complaint alleges that he was hired by Public Service Electric & Gas Company in July 1981, and that his current job as of February 1996 is as a Nuclear Control Operator. Although it appears that he has worked steadily in different capacities for the respondent since July 1981, Werline requests back pay relief from May 24, 1995, the date he presented PSE&G with the disputed documents. He checked the box on the form complaint stating "Yes" next to the description "the Business/Employer refused to accept the documents that I presented to show I can work in the United States." The form complaint provides that, if the answer to that question is "yes," the complainant is to list the documents the employer allegedly refused to accept. Werline listed "Statement of Citizenship proving my Citizenship and asserting my rights as a Citizen under Federal law, and affecting others linked to my status" and "Affidavit of Constructive Notice asserting my rights as a Citizen of the U.S. as seen by the U.S. Supreme Court, and there by (sic) revealing that I am not to be treated as an alien."

A copy of a letter dated February 28, 1996 addressed to the Office of Special Counsel for Immigration-Related Unfair Employment Practices accompanies the complaint, along with other documents. The letter is from the National Worker's Rights Committee and indicates the Committee's

view of the factual and legal bases for initiating Werline's charge that PSE&G engaged in unfair immigration-related employment practices:

> On the date of May 24, 1995, Mr. Werline submitted a statement of Citizenship to Public Service Electric and Gas since he is a Citizen of the U.S. and has not lawfully applied for a social security number, he submitted a Statement of Citizenship, pursuant to 26 C.F.R. § 1.1441-5, which states that he is a U.S. Citizen, and the IRS publication 515, which states that after receipt of the statement, the withholding agent is relieved from the duty of withholding the income tax. The relevant parts of the Treasury Regulation and the IRS publication are reproduced here in part:
>
> [omitted]
>
> The law makes no other statements concerning the required actions of the withholding agent. It is clear that there is no option given to the withholding agent, and it is the IRS's job to handle the claims of the U.S. Citizen from this point. Upon review of Title 8 § 1324b, it is apparent that the law you enforce concurs. Our understanding of the law is based upon the recognized standards of statutory construction by the Federal Courts (*infra*). In short, the law means exactly what it says and nothing more.
>
> It was additionally communicated to Mr. Braun, at Public Service Electric and Gas, by service of an Affidavit of Constructive Notice, that Mr. Werline does not have, nor does he recognize a social security number in relationship to himself. This is due to the fact that he has executed an Affidavit of Revocation and Rescission of his signature on the SS-5 Application for a Social Security Account Number Card, since there is no law that requires a U.S. Citizen to apply for or possess such a number.

The remainder of the letter alleges that Werline has revoked and rescinded his social security number and is not subject to Subtitle C of the Internal Revenue Code. He claims that his employer has no right to withhold sums from his wages for federal taxes. The allegations appear to be predicated upon the theory that United States citizenship insulates Werline from withholding for taxes and from participation in the Social Security system and that, in refusing his claim to be exempt from withholding, PSE&G treated him as a non-resident alien. It asserts that among the rights of a citizen, "[t]wo of such rights are the rights to claim not to be subject to withholding of income tax and the right not to make voluntary application for a social security number."

Also attached is a letter of August 20, 1996 from the Office of Special Counsel for Immigration-Related Unfair Employment Practices to the National Worker's Rights Committee stating with respect to Werline's charge and eight other charges filed by Mr. Kotmair that:

> Based on the information that we received, we feel that all of these charges are based on the charging parties (sic) requests that their employers' (sic) stop withholding federal tax from their wages, and the employers' refusal to comply with those request (sic). These refusals do not, in our view, constitute a violation of 8 U.S.C. § 1324b. Therefore, this Office has decided not to file complaints with the Administrative Law Judge regarding the above referenced charges.

The letter authorizes Werline to file a complaint with the Office of the Chief Administrative Hearing Officer within 90 days of the date thereof. Werline filed his complaint with the Office of the Chief Administrative Hearing Officer (OCAHO) on November 18, 1996.

A "Notice of Appearance" was subsequently filed by John B. Kotmair, Jr. together with a "Privacy Act Release Form and Power of Attorney" which authorizes not only Kotmair but also "any of his designees" the authority, inter alia,

> to represent me before the Equal Employment Opportunity Commission, the United States Department of Justice, Office of Special Counsel for Immigration-Related Affairs (sic), Office of Chief Administrative Hearing Officer (sic) (OCAHO), and in any proceeding before an Administrative Law Judge in OCAHO.

The document further authorizes Kotmair or his designee to obtain from Public Service,

> copies of the records pertaining to any matter involving: the withholding of taxes (including but not limited to a Statement of Citizenship) that either Public Service Electric and Gas Company, . . . or the Internal Revenue Service (IRS) alleges I may owe; any claim or levy authority submitted to Public Service Electric and Gas Company . . . by the IRS extra legem (sic) for the purposes of persuading the release of monies due me by the IRS.

On January 2, 1997 the complaint, along with a Notice of Hearing and transmittal letter were served upon respondent. An answer was therefore due on February 3, 1997.

On March 7, 1997, Public Service filed an answer, a motion to dismiss, and an affidavit. Respondent's answer denied that its actions violated 8 U.S.C. § 1324b, stated its compliance with federal and state laws governing withholding for taxes, and stated further that the documents Public Service had refused to honor were proffered by the complainant as part of his efforts to avoid paying taxes, not to show that he could work in the United States. Respondent stated that on numerous occasions, including July 26, 1993, October 29, 1993, March 4, 1994, April 29, 1994, and May 16, 1995, complainant made the same request to be exempted from withholding for taxes. Respondent further denied that John B. Kotmair is qualified to represent complainant and alleged three affirmative defenses: failure to state a cause of action on which relief may be granted, good faith and no intent to

discriminate, and unclean hands. Attorney's fees were requested. Several documents were appended to the answer, including various correspondence from Werline to Public Service's paymaster and other personnel which confirm that there is an ongoing and longstanding dispute between the parties over Public Service's withholding sums from Werline's paychecks for federal taxes. Some of the letters contained veiled or explicit threats; the demand in each is that Public Service cease withholding taxes from Werline's paycheck.

The facts in this case do not appear to be in dispute save for the specific question of the purpose for which the subject documents were tendered. The form complaint asserts that the documents were presented "to show I can work in the United States" but other exhibits demonstrate that the documents were presented in order to support a request to be exempted from withholding for taxes.

On March 10, 1997, Werline filed a Motion for Default Judgment and on March 13, 1997, a Motion to Strike Respondent's Answer. On March 19, 1997, counsel for respondent filed an affidavit in response. There has been no response to Public Service's Motion to Dismiss.[1] For the reasons more fully set out herein, the Motion for Default Judgment is denied, the Motion to Strike Respondent's Answer is denied, and the Motion to Dismiss is granted.

THE APPLICABLE STATUTORY PROVISION

The Immigration Reform and Control Act of 1986 (IRCA), enacted as an amendment to the Immigration and Nationality Act, (INA), established a comprehensive system of employment eligibility verification, 8 U.S.C. § 1324a, as well as prohibitions against certain unfair immigration-related employment practices. 8 U.S.C. § 1324b. Congress for the first time made it unlawful for an employer to hire employees without verifying their eligibility to work in the United States. A prospective employer is obligated under the employment eligibility verification system to examine certain documents acceptable for demonstrating a worker's identity and employment eligibility under § 1324a(b)(1), 8 C.F.R. § 274a.2(b)(1)(v)(1996), and to complete a form I-9 for each new employee.

The specific provision at issue in this proceeding, 8 U.S.C. § 1324b(a)(6), provides that certain documentary practices may be treated as discriminatory hiring practices.

---

[1] Rules of Practice and Procedure for Administrative Hearings codified at 28 C.F.R. Pt. 68 (1996) provide that a party shall have ten (10) days following the filing of a motion to respond. 28 C.F.R. § 68.11(b). Section 68.8(c)(2) provides that when service is had by ordinary mail, five (5) days shall be added to the prescribed period.

> For purposes of paragraph (1),[2] a person's or other entity's request, for purposes of satisfying the requirements of section 1324a(b)[3] of this title, for more or different documents than are required under such section or refusing to honor documents tendered that on their face reasonably appear to be genuine shall be treated as an unfair immigration-related employment practice relating to the hiring of individuals.

The specific documents acceptable to show identity and employment eligibility are set out in 8 U.S.C. §§ 1324a(b)(1)(B), (C), and (D), 8 C.F.R. §§ 274a.2(b)(1)(v)(A), (B), and (C). List A documents are acceptable to show both identity and employment eligibility, and include a United States passport, certain unexpired foreign passports showing work authorization and various INS forms, including INS Forms N-550 or N-570, I-151 or I-551, I-688, I-688A, I-688B, I-327, I-571, and N-560 or N-561, a Certificate of United States Citizenship.[4] List B documents are acceptable to establish identity only, and include drivers' licenses and certain specific identification cards; List C documents, which establish work authorization only, include social security cards, certain birth certificates, Native American tribal documents, various State Department Forms including FS-545 and DS-1350, and INS Forms including I-197 and I-179, or unexpired employment authorization documents issued by INS. When a document from the lists set out in § 1324a(b)(1), 8 C.F.R. § 274a.2(b)(1)(v) is presented for purposes of satisfying the requirements of the employment eligibility verification system, an employer, recruiter, or referrer for a fee is obligated to accept the document if it appears on its face to be genuine.

The underlying aim of IRCA itself is to deter illegal immigration of persons in search of jobs by imposing on employers the duty to verify the employment eligibility of employees to ensure that a prospective employee is not an unauthorized alien. The subject provision was added by the Immigration Act of 1990 (IMMACT) to address concerns that employers were rejecting valid work documents, and to ensure that the choice among the documents on the approved list would be the employee's choice, not the employer's.

As was observed in United States v. Zabala Vineyards, 6 OCAHO 830 (1995),

---

[2] Paragraph (1) deals with the hiring, recruitment, referral for a fee, or discharge of employees.

[3] Section 1324a(b) sets forth the specifics of the employment eligibility verification system.

[4] The source of Werline's "Statement of Citizenship proving my Citizenship and asserting my rights as a Citizen under Federal law, and affecting others linked to my status" is unclear. The form is not part of the record and there is no assertion that it is related in any way to INS form N-560 or N-561 Certificate of United States Citizenship. The forms issued by INS do not purport to address issues of federal taxation.

> There is precious little legislative history undergirding enactment of § 1324b(a)(6), but there can be no doubt in [the] context of the GAO and Task Force Reports that the seminal problem to be addressed was that of 'employers' refusal to accept or uncertainty about, valid work eligibility documents.'

Zabala Vineyards, 6 OCAHO 830, at 15 (citing General Accounting Office Report B - 125051, at 86 (1990)).

Accordingly, the rejection of a prospective employee's proffered documents will be treated as an unfair hiring practice under this provision if: 1) a document from List A or one document each from both List B and List C are presented to an employer, recruiter, or referrer for a fee by a prospective employee for the purpose of hiring, recruitment, or referral, 2) the documents on their face appear to be genuine, and 3) the employer, recruiter, or referrer refuses to honor the documents as satisfying the requirements of the employment eligibility verification system.

Regulations implementing the employment eligibility verification system also make clear that the statute was to have prospective application only. Employers are required to examine documents and to complete Form I-9 only for individuals hired after November 6, 1986 who continued to be employed after May 31, 1987. 8 C.F.R. § 274a.2. The penalty provisions similarly have no application to employees hired prior to November 7, 1986 who continued in their employment. 8 C.F.R. § 274a.7.

DISCUSSION

I. Standards for Default Judgment

Complainant cites 28 C.F.R. § 68.9(b), which provides that lack of a timely answer shall be deemed to constitute a waiver of the right to appear and contest the complaint, to support his contention that he is entitled to the entry of a judgment by default. The Motion to Strike Respondent's Answer is similarly premised upon the contention that because the answer is untimely under 28 C.F.R. § 68.9(b), it therefore must be stricken.

Default judgments are not favored in the law and should be used only where the inaction of a party causes the case to come to a halt. United States v. R&M Fashion, Inc., 6 OCAHO 826, at 2 (1995), citing H.F. Livermore Corp. v. Aktiengesellschaft Gebruder Loepfe, 432 F.2d 689, 691 (D.C. Cir. 1970). The purpose of a default judgment, both historically and now, is to protect a diligent party from delay caused by an essentially unresponsive party. See generally 10 Charles Alan Wright, Arthur Miller and Mary Kay Kane, Federal Practice and Procedure § 2681 (2d ed. 1983 & Supp. 1995). This is not such a case.

Although the answer was late, it does not appear either that the delay was inordinate or that Werline was prejudiced in any way by the late answer. The motion for default and the motion to strike the answer will be denied.

II. Standards for Motion to Dismiss

A motion to dismiss for failure to state a claim is also a disfavored motion. The usual caution is that dismissal is proper only if "it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." Conley v. Gibson, 355 U.S. 41, 45-46 (1957). Cf. Hishon v. King & Spalding, 467 U.S. 69, 73 (1984). It is also true, however, that a complaint must set forth allegations of fact sufficient to establish the crucial elements of a claim. Even under the liberal pleading standard, a complaint must allege more than unsupported conclusions of law to defeat a motion to dismiss. See Palda v. Gen. Dynamics Corp., 47 F.3d 872, 875 (7th Cir. 1995). A party can also plead him or herself out of court by pleading facts showing the absence of a valid claim. Tregenza v. Great Am. Communications Co., 12 F.3d 717, 718 (7th Cir. 1993), cert. denied, 511 U.S. 1085, (1994), Early v. Bankers Life & Cas. Co., 959 F.2d 75, 79 (7th Cir. 1992). While well pleaded factual allegations and inferences reasonably drawn from those facts will be taken as true in ruling on a motion to dismiss, there is no obligation to ignore facts in the complaint[5] which undermine the pleader's claim. R.J.R. Servs., Inc. v. Aetna Cas. and Sur. Co., 895 F.2d 279, 281 (7th Cir. 1989). Neither is there any obligation to accept legal conclusions cast in the form of factual allegations if those conclusions cannot reasonably be drawn from the facts alleged. Papasan v. Allain, 478 U.S. 265, 286 (1986).

As is by now well established in OCAHO jurisprudence, the activities prohibited by 8 U.S.C. § 1324b include discrimination in hiring, firing, recruitment, referral for a fee, retaliation for engaging in protected activity, and document abuse. 8 U.S.C. §§ 1324b(a)(1), (a)(5), and (a)(6). Mathews v. Goodyear Tire & Rubber Co., 7 OCAHO 929, at 9 (1997) (citing Smiley v. City of Philadelphia, 7 OCAHO 925, at 18 (1997)); Tal v. M.L. Energia, Inc., 4 OCAHO 705, at 14 (1994). Other terms and conditions of employment such as wages, promotions, employee benefits, and the like are beyond the reach of the INA. See, Lareau v. USAir, Inc., 7 OCAHO 932, at 11 (1997) (citing cases). Thus a long term incumbent employee's complaints about the terms and conditions of his employment fail to state a claim under § 1324b. Wilson v. Harrisburg Sch. Dist., 6 OCAHO 919, at 3-4, 9 (1997), Horne v. Hampstead, 6 OCAHO 906, at 5-6 (1997). Similarly beyond the reach of the INA is a complaint which does not set forth either direct or inferential allegations respecting all of the material elements necessary to sustain a recovery under some viable legal theory. LRL Properties v. Portage Metro Hous. Auth., 55 F.3d 1097, 1103 (6th Cir. 1995).

---

[5] In considering a motion to dismiss, it is appropriate to limit review to the facts alleged in the complaint, but the complaint includes as well any written attachments or exhibits, and any statements or documents incorporated therein by reference. Paulemon v. Tobin, 30 F.3d 307, 308 (2d Cir. 1994).

Here it is apparent that notwithstanding the box checked on the face of the form complaint asserting that the documents were tendered "to show I can work in the United States, " the facts demonstrate otherwise. Because Werline has been steadily employed by respondent since 1981, he is not an employee hired subsequent to the enactment of IRCA in 1986. Consequently PSE&G never had any obligation to make inquiry as to his employment eligibility, to review any documents establishing his employment eligibility, or to complete an I-9 form for him. Indeed, the complaint does not allege that PSE&G ever requested any documents whatsoever for the purposes of establishing Werline's eligibility to work in the United States. The employment eligibility verification process never comes into the picture at all for an individual continually employed by the same employer since 1981. As respondent never had any need to verify his eligibility to work, the documents Werline presented cannot have been presented to show he could work in the United States.

Second, the documents tendered were not in any event documents acceptable to show identity and/or employment authorization for purposes of satisfying the requirements of the employment verification system set out at § 1324a(b). Because Werline's documents are not documents acceptable to show he can work in the United States, the refusal of his employer to accept them, even had they been presented for that purpose, would not violate the INA.

Third, it is unclear whether documents which purport to exempt a person from the Internal Revenue Code or the Social Security Act could ever "reasonably appear to be genuine" when they are not issued by the agencies authorized to issue such exemptions. Neither the INS nor the Social Security Administration has exempted Werline from withholding for taxes and no other entity, including the National Worker's Rights Committee, has any statutory authority to do so.

Jurisdiction of administrative law judges over allegations of document abuse is limited by the terms of the governing statute. The employment verification system is set out in 8 U.S.C. § 1324a(b) which identifies the specific documents approved for the purpose of establishing identity and employment eligibility. Nothing in the statutory scheme permits much less requires an employer to accept documents other than the ones specifically approved to show eligibility to work in the United States. Nothing in the employment eligibility verification process touches on an employee's federal income tax withholding obligations. Rejection of an employee's unilateral claim of tax exemption is not an immigration-related employment practice. An employer's requirement that an employee furnish a social security number is not an immigration-related employment practice, and is not a request for a document within the meaning of § 1324b(a)(6). Lee v. Airtouch, 6 OCAHO 901, at 12 (1996). The issues complainant raises have nothing whatever to do with immigration-related employment practices related to the hiring of individuals, and are simply beyond the reach of 8 U.S.C. § 1324b(a)(6).

This case is one of a growing number of OCAHO cases premised upon the same or substantially similar allegations seeking to transform OCAHO proceedings into a forum for the advancement of the political agenda of the National Worker's Rights Committee. Lareau v. USAir,

Inc., 7 OCAHO 932 (1997), Jarvis v. A.K. Steel, 7 OCAHO 930 (1997), Mathews v. Goodyear Tire & Rubber Co., 7 OCAHO 929 (1997), Winkler v. West Capital Fin. Servs., 7 OCAHO 928 (1997), Smiley v. Philadelphia, 7 OCAHO 925 (1997), Austin v. Jitney-Jungle Stores of Am., Inc., 6 OCAHO 923 (1997), Wilson v. Harrisburg Sch. Dist., 6 OCAHO 919 (1997), Costigan v. Nynex, 6 OCAHO 918 (1997), Boyd v. Sherling, 6 OCAHO 916 (1997), Winkler v. Timlin Corp., 6 OCAHO 912 (1997), Horne v. Hampstead, 6 OCAHO 906 (1997), Lee v. Airtouch Communications, 6 OCAHO 901 (1996), appeal filed, No. 97-70124 (9th Cir. 1997), Toussaint v. Tekwood Assocs., Inc.,[6] 6 OCAHO 892 (1996), appeal filed No. 96-3688 (3d Cir. 1996). Each of these cases asserted similar claims that a respondent employer's requirement for an employee's social security number and/or an employer's withholding of sums from an employee's wages for taxes, is an immigration-related unfair employment practice or otherwise discriminates in violation of 8 U.S.C. § 1324b. All of these cases were dismissed at an early stage; none has survived preliminary motions to dismiss either on jurisdictional grounds or for failure to state a claim.[7]

Werline's assertion that citizens of the United States residing therein are not subject to federal taxation and are free to decline participation in the social security system appears to be based upon wishful thinking. For over 75 years, the Supreme Court and other federal courts have recognized the Sixteenth Amendment's authorization of non-apportioned direct income taxes upon United States citizens residing in the United States. Brushaber v. Union Pac. R.R. Co., 240 U.S. 1, 12-19 (1916), Lovell v. United States, 755 F.2d 517, 519 (7th Cir. 1984), Parker v. Comm'r., 724 F.2d 469, 471 (5th Cir. 1984), United States v. Romero, 640 F.2d 1014, 1016 (9th Cir. 1981). Employers are

---

[6] While neither Kotmair nor the National Worker's Rights Committee appear of record in Toussaint, the allegations are substantially similar.

[7] Several additional cases of similar character are currently pending in this office. Hogenmiller v. Lincare, Inc., OCAHO Case No. 96B00104, filed May 12, 1997; Olson v. University Med. Ctr. Corp., OCAHO Case No. 97B00093, filed April 14, 1997; Stephens v. Safe Kids, Inc., OCAHO Case No. 97B00092, filed April 14, 1997; Cook v. Pro Source, Inc., OCAHO Case No. 97B00090, filed April 4, 1997; Hendrickson v. Gen. Tel.Communication Corp., OCAHO Case No.97B00089, filed April 4, 1997; Davis v. Gen. Tel. and Elec., OCAHO Case No. 97B00088, filed April 4, 1997; Davis v. Gen. Tel. and Elec. , OCAHO Case No. 97B00087, filed April 4, 1997; Hollingsworth v. Applied Research Assocs., OCAHO Case No. 97B00085, filed April 2, 1997; Hutchinson v. GTE Data Servs., OCAHO Case No. 97B00084, filed April 2, 1997; Hutchinson v. End Stage Renal Disease Network of Fla., Inc., OCAHO Case No.97B00083, filed April 2, 1997; Aguilar v. United Parcel Serv., OCAHO Case No. 97B00079, filed March 31, 1997; Lee v. AT&T, OCAHO Case No. 97B00031, filed November 25, 1996; D'Amico v. Erie Community College, OCAHO Case No. 97B00027, filed November 18, 1996; Kosatschkow v. Allen-Stevens Corp., OCAHO Case No. 97B00025, filed November 18, 1996; and Cholerton v. Hadley, OCAHO Case No. 96B00046, filed May 14, 1996.

required by 26 U.S.C. § 3102(a) and § 3402(a) to deduct and withhold income and social security taxes from the wages of their employees. It is also well established by the highest authority that one may not unilaterally opt out of the social security system. United States v. Lee, 455 U.S. 252, 258 (1982). These clear precedents are not vulnerable to overruling by an administrative tribunal with jurisdiction limited to specific provisions of the INA.

The complaint must be dismissed. Ordinarily the dismissal of a claim for failure to meet minimal pleading requirements should be accompanied by a grant of leave to file an amended complaint to cure the defect. Simmons v. Abruzzo, 49 F.3d 83, 86-87 (2d. Cir. 1995), Bransom v. Clark, 927 F.2d 698, 705 (2d Cir. 1991) (citing Salahuddin v. Cuomo, 861 F.2d 40, 42 (2d Cir. 1988)). Where, as here, it appears to a certainty that amendment would be futile, there is no reason to permit such filing. Cf. Acito v. IMCERA Group, Inc., 47 F.3d 47, 55 (2d Cir. 1995).

FINDINGS

1. Earl W. Werline, III was hired by Public Service Electric and Gas Co. in July 1981.

2. Earl W. Werline, III continued to work at Public Service Electric and Gas Co. from 1981 to the present, most recently since February 1996 in the capacity of a Nuclear Control Operator.

3. On May 24, 1995, Earl W. Werline, III presented to Public Service Electric and Gas Co. documents entitled "Statement of Citizenship proving my Citizenship and asserting my rights as a Citizen under Federal law, and affecting others linked to my status" and "Affidavit of Constructive Notice asserting my rights as a Citizen of the U.S. as seen by the U.S. Supreme Court, and there by (sic) revealing that I am not to be treated as an alien."

4. The precise origin of the documents is undisclosed.

5. The documents were presented to Public Service Gas & Electric for the purpose of persuading the employer to cease withholding sums from Werline's wages for federal taxes and social security contributions.

6. Public Service Electric & Gas Co. declined to honor the documents or to cease withholding sums from Werline's wages for federal taxes and social security contributions as Werline requested.

7. The documents were not presented in the process of hiring, recruitment, or referral for a fee.

8. The documents are not documents acceptable for the purpose of showing an employee's identity or eligibility to work in the United States.

9. The documents were not presented for the purpose of showing Werline's identity or eligibility to work in the United States.

10. Public Service Electric & Gas Company had no obligation to ascertain Werline's eligibility to work in the United States or to complete an I-9 form for him.

11. Public Service Electric & Gas Company's rejection of Werline's documents does not violate 8 U.S.C. § 1324b.

CONCLUSION

Werline's complaint fails to state a claim upon which relief can be granted because it poses no issues cognizable under 8 U.S.C. § 1324b. It is accordingly dismissed.

Respondent has requested $512.00 in attorney's fees. Complainant may file any opposing papers on or before June 20, 1997. Respondent may reply on or before July 7, 1997.

SO ORDERED.

Dated and entered this 29th day of May, 1997.

_____

Ellen K. Thomas
Administrative Law Judge

APPEAL INFORMATION

In accordance with the provisions of 8 U.S.C. § 1324b(g)(1), this Order shall become final upon issuance and service upon the parties, unless, as provided for under the provisions of 8 U.S.C. § 1324b(i), any person aggrieved by such Order seeks timely review of that Order in the United States Court of Appeals for the circuit in which the violation is alleged to have occurred or in which the employer resides or transacts business, and does so no later than 60 days after the entry of such Order.

CERTIFICATE OF SERVICE

I hereby certify that on this 29th day of May, 1997, I have served copies of the foregoing Final Decision and Order With Schedule for Briefing on Attorney's Fees on the following persons at the addresses indicated.

James S. Angus, Esq.
Acting Special Counsel
Office of Special Counsel for Immigration-
Related Unfair Employment Practices
P.O. Box 277728
Washington, D.C. 20038-7728

Mr. Earl W. Werline, III
P.O. Box 488
Cedarville, NJ 08311-9999

Mr. John B. Kotmair, Jr.
National Worker's Rights Committee
12 Carroll Street
Westminster, MD 21157-9999

Public Service Electric & Gas Company
P.O. Box 236
Hancocks Bridge, NY 08039-0000

Office of the Chief Administrative Hearing Officer
5107 Leesburg Pike, Suite 2519
Falls Church, VA 22041

_____

Cynthia A. Castañeda
Legal Technician to
Ellen K. Thomas
Administrative Law Judge
Office of the Chief Administrative Hearing
Officer
5107 Leesburg Pike, Suite 1905
Falls Church, VA 22041